

ESTTA Tracking number: **ESTTA626183**Filing date: **09/09/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	GE Nutrients, Inc.		
Entity	Corporation	Citizenship	California
Address	19700 Fairchild Road Suite 380 Irvine, CA 92612 UNITED STATES		

Attorney information	Ryan M. Kaiser Amin Talati, LLC 55 W. Monroe Street Suite 3400 Chicago, IL 60603 UNITED STATES ryan@amintalati.com,saira@amintalati.com,ashley@amintalati.com Phone:3123273328
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Registration Subject to Cancellation

Registration No	4302581	Registration date	03/12/2013
Registrant	CA IP HOLDINGS, LLC 2041 HIGH RIDGE ROAD BOYNTON BEACH, FL 33426 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2011/08/01 First Use In Commerce: 2011/10/01
All goods and services in the class are cancelled, namely: Dietary supplements for supporting testosterone production

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Common Law Rights and priority in TESTOFEN mark.

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3336267	Application Date	06/22/2005
Registration Date	11/13/2007	Foreign Priority Date	NONE
Word Mark	TESTOFEN		

Design Mark	<h1>Testofen</h1>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2005/06/30 First Use In Commerce: 2005/06/30 dietary supplements sold and distributed over the counter

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	TESTOFEN		
Goods/Services	common law usage in dietary and nutritional supplements		

Attachments	78655800#TMSN.png(bytes) 09 09 2014 Petition for Cancellation Final.pdf(79075 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/Ryan M. Kaiser
Name	Ryan M. Kaiser
Date	09/09/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No.: 4,302,581

For the Mark: TESTOGEN-XR

Date Registered: March 12, 2013

GE NUTRIENTS, INC.)	
)	
Petitioner,)	
)	
V.)	Petition No. _____
)	
CA IP HOLDINGS, LLC)	
)	
Registrant.)	
)	

PETITION FOR CANCELLATION

Petitioner, GE Nutrients, Inc., a California corporation with a business address of 19700 Fairchild Road, Suite 380, Irvine, California 92612, hereby petitions to cancel registration of the mark TESTOGEN-RX which is the subject of Registration No. 4,302,581, and requests said registration be cancelled.

As grounds in support of its petition, Petitioner asserts as follows:

1. Petitioner for many years and since long prior to any date of first use upon which Registrant can rely, has adopted and continuously used the term "TESTOFEN" as a trademark for use in connection its dietary supplement product. Petitioner's TESTOFEN product increases testosterone production in individuals and assists in increasing muscle mass and definition and supports a reduction in body fat. Therefore, health enthusiasts and consumers looking to increase their muscle mass and improve their physical performance purchase these products.

2. Petitioner is the owner of Registration No. 3,336,267 for the mark TESTOFEN for use in connection with “dietary supplements sold and distributed over the counter” in international class 005. Registration No. 3,336,267 is valid, subsisting and incontestable. A copy of Registration No. 3,336,267 is attached to this Petition.

3. Petitioner also has extensive common law rights in the word mark, TESTOFEN, which Petitioner has used as a mark on its dietary supplement product since 2005 through the present in the nutritional supplement market.

4. Registrant has obtained registration of the standard character word mark TESTOGEN-XR for use in connection with “dietary supplements for supporting testosterone production” in international class 005.

5. Registrant’s claimed date of first use is August 1, 2011. Upon information and belief, August 1, 2011 is the earliest date upon which Registrant can rely for purposes of determining priority of use of the TESTOGEN-XR mark.

6. The product upon which Registrant uses the TESTOGEN-XR mark is highly related to Petitioner’s goods. Registrant targets consumers who are looking to increase testosterone levels, reduce fat, and increase lean body mass. For example, Registrant claims its product, “supports natural testosterone production” and “helps support lean body mass and aids in fat reduction.”

7. Registrant's mark TESTOGEN-RX so resembles Petitioner's registered and incontestable TESTOFEN mark as to be likely, when applied to the goods set forth in

Registrant's registration, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.

WHEREFORE, Petitioner prays that the petition be sustained and that Registration No. 4,302,581 be cancelled.

Dated: September 9, 2014

Respectfully submitted:

/s/ Ryan M. Kaiser
Ryan M. Kaiser
Saira J. Alikhan
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Attorneys for Petitioner

Certificate of Service

I hereby certify that on this 9th day of September 2014, the forgoing **Petition to Cancel** was served, by mailing same by US First Class mail, on the following correspondent as set forth in the records of the U.S. Patent and Trademark Office:

Scott D. Smiley
The Concept Law Group, P.A.
Museum Plaza
200 South Andrews Avenue, Suite 100
Fort Lauderdale, FL 33301

CA IP Holdings, LLC
2041 High Ridge Road
Suite B
Boynton Beach, Florida 33426

/s/ Saira J. Alikhan_____

Saira J. Alikhan

CERTIFICATE OF TRANSMISSION

I, Saira J. Alikhan, hereby certify that the forgoing **Petition to Cancel** is being electronically transmitted to the United States Patent and Trademark Office today, August 9, 2014.

Dated: September 9, 2014

/s/ Saira J. Alikhan _____
Saira J. Alikhan

Exhibit A

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,336,267

Registered Nov. 13, 2007

**TRADEMARK
PRINCIPAL REGISTER**

Testofen

GENCOR PACIFIC, INC. (VIRGINIA CORPORATION)
5721 BAYSIDE ROAD, SUITE B
VIRGINA BEACH, VA 23455

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: DIETARY SUPPLEMENTS SOLD AND DISTRIBUTED OVER THE COUNTER, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SN 78-655,800, FILED 6-22-2005.

FIRST USE 6-30-2005; IN COMMERCE 6-30-2005.

PRISCILLA MILTON, EXAMINING ATTORNEY